Federal Home Loan Bank Act, c. 522, 47 Stat. 725:

Section 1422. Definitions:

As used in this chapter—

(1) The term "board" means the Federal Home Loan Bank Board.

(2) The term "Federal Home Loan Bank" means a bank established by the board under authority of this chapter.

(4) The term "member" (except when used in reference to a member of the board) means any institution which has subscribed for the stock of a Federal Home Loan Bank.

(5) The term "home mortgage loan" means a loan made by a member or a nonmember borrower upon the security of a home mortgage.

(9) The term "nonmember borrower" includes an institution authorized to secure advances from a Federal Home Loan Bank under the provisions of subsection (e) of section 1426 of this title.

(12 U. S. C. 1422)

Section 1424. Eligibility of member and nonmembers borrowers; loans to home owners.

(a) Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as, in the judgment of the board, are long-term loans (and in the case of a savings bank if, in the judgment of the board, its time deposits, as defined in section 461 of this title, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the

board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this chapter.

(b) An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the board shall prescribe, be eligible to become a member.

(12 U. S. C. 1424)

Section 1426. Capital stock—Minimum amount; subscription books.

(e) If the law of the State under which an institution described in section 1424 of this title operates does not permit such institution to subscribe for stock in the Federal Home Loan Bank but if such institution has the power to borrow money and give security therefor, the board may permit such institution to obtain advances on the same terms and conditions and subject to the same limitations as members (except that such institution shall not be required, during the period during which advances may be made under this subsection, to subscribe for stock in the Federal Home Loan Bank or to deposit such stock as collateral security as re-

quired in section 1430 of this title), but such institution shall be required to keep on deposit such security in addition to home mortgages, for such advances, as the board shall determine, which shall equal in value 1 per centum of the aggregate unpaid principal of such institution's home mortgage loans (but not less than $500.00). No advance to any such institution shall be made under authority of this subsection after the State in which the institution is organized enacts legislation authorizing such institution to subscribe for Federal Home Loan Bank stock or after the expiration of the next regular session of the legislature of such State begun after July 22, 1932, whichever is earlier. If, at the end of such time, such institution is not authorized to subscribe for stock, the bank shall proceed to liquidate the indebtedness of such institution to the bank and to terminate its relations with such institution. No advance shall be made under authority of this subsection which matures more than one year after the advance is made, but the bank may renew any such advance for yearly periods, or less, thereafter. The maturity of no advance authorized under this subsection shall be later than the time of the enactment of legislation authorizing such institution to become a member or the expiration of such session of the legislature of the State, whichever is earlier.

(12 U. S. C. 1426(e))

Section 1430. Advances—Authorization to make; limitation on amount.

(a) Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe.

(c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the Board may approve or determine, and

the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twelve times the amounts paid in by such member for outstanding capital stock held by it, or made to a nonmember borrower exceed twelve times the value of the security required to be deposited under subsection (e) of section 1426 of this title.

(12 U. S. C. 1430(a), (c))

Section 1433. Exemption from taxation; obligation acceptable as credit on debt of home owner.

Any and all notes, debentures, bonds, and other such obligations issued by any bank and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any homeowner debtor of such bank.

(12 U. S. C. 1433)

Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128:

Section 1462. Definitions.

As used in this chapter—

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 1464 of this title.

(12 U. S. C. 1462(d)).

Section 1464. Federal Savings and Loan Associations—Organization authorized.

(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(h) Such associations, including their franchises, capital, ~~reserves~~ reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on

other similar local mutual or cooperative thrift and home financing institutions.

(k) When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.

(12 U. S. C. 1464(a), (h), (k))

Code of Laws of South Carolina (1952), Volume 6, Title 65:

Article 2

DOCUMENTARY STAMP TAX

Section 65-688. Notes, mortgages; assignments of wages, etc.

The tax on promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed, non-negotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents.

1942 Code Section 2525; 1932 Code Section 2525; 1928 (35) 1089; 1932 (37) 1378.

CERTIFICATE OF SERVICE

I, James M. Windham, Counsel for Respondents, South Carolina Tax Commission and Otis W. Livingston, Chairman *et al.*, and a member of the Bar of the Supreme Court of the United States, hereby certify that I served copies of the foregoing brief on the several parties as follows:

1. On the United States, as *amicus curiae*, by mailing copies in duly addressed envelope, with first class air mail postage prepaid to the following counsel of record:

J. LEE RANKIN
Solicitor General
Department of Justice
Washington 25, D. C.

CHARLES K. RICE
Assistant Attorney General
Department of Justice
Washington 25, D. C.

2. On petitioner by delivering copies of same personally, with a written acknowledgement thereof to:

FRANK K. SLOAN
900 Security Federal Building
Columbia, South Carolina

ERNEST L. FOLK III
900 Security Federal Building
Columbia, South Carolina

JAMES M. WINDHAM

On this 2nd day of
February, 1961.

SUPREME COURT OF THE UNITED STATES

No. 126.—October Term, 1960.

Laurens Federal Savings and Loan Association, Petitioner, v. South Carolina Tax Commission, et al. } On Writ of Certiorari to the Supreme Court of the State of South Carolina.

[March 20, 1961.]

Mr. Justice Black delivered the opinion of the Court.

The question presented is whether the State of South Carolina has power to require a Federal Savings and Loan Association located in that State to pay documentary stamp taxes on promissory notes executed by the Association in favor of a Federal Home Loan Bank to cover loans from the Bank to the Association.

Petitioner is a Federal Savings and Loan Association organized under the Home Owners' Loan Act of 1933[1] and doing business in Laurens, South Carolina. It is also a member, with borrowing privileges, of the Federal Home Loan Bank of Greensboro, North Carolina, which was established under the Federal Home Loan Bank Act of 1932.[2] For the purpose of making mortgage money available in the community which it serves, petitioner Federal Savings and Loan Association has since August 12, 1953, secured "advances," or loans, from the Federal Home Loan Bank of Greensboro totalling $5,675,000, for which petitioner executed written promissory notes to the Bank as required by the 1932 Act. The State assessed against petitioner documentary stamp taxes on these notes of $2,270 under a state statute imposing a stamp

[1] 48 Stat. 128, 12 U. S. C. §§ 1461-1468.
[2] 47 Stat. 725, 12 U. S. C. §§ 1421-1449.

tax on promissory notes at the rate of four cents on each $100.[3] Petitioner paid these taxes under protest and then brought the present action in the state court for refund of the payment,[4] claiming that the imposition of the taxes constituted an unlawful attempt by the State to tax the "advances" of the Federal Home Loan Bank of Greensboro in violation of the provision of the 1932 Act exempting such banks from state taxation. This provision states, in pertinent part:

> "The bank, including its franchise, its capital, reserves, and surplus, *its advances*, and its income, shall be exempt from all taxation now or hereafter imposed by the United States . . . or *by any State* . . . ." 12 U. S. C. § 1433. (Emphasis supplied.)

The Supreme Court of South Carolina affirmed the judgment upholding the State's taxing power, basing its affirmance on two grounds.[5] It was of the opinion, first, that the exemption provision of the 1932 Act, although completely exempting the loans of the Federal Home Loan Bank from state taxation, did not cover the stamp taxes on the promissory notes securing the loans because these taxes were imposed upon the borrowing Savings and Loan Association rather than upon the lending Home Loan Bank and for this reason should not be considered taxes on the Bank's loans within the meaning of the 1932 provision. Secondly, the state court held that regardless of the original scope of the 1932 exemption, that exemption was implicitly repealed as to transactions like this one by the taxation provision of the Home

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[3] Code of Laws of South Carolina, § 65-688 (1952).

[4] Such suits are authorized by Code of Laws of South Carolina, § 65-2662 (1952).

[5] 236 S. C. 2, 112 S. E. 2d 716.

Owners' Loan Act of 1933. We granted certiorari in order to determine whether the State has imposed a tax forbidden by Congress.*

The first question is whether the immunity granted "advances" of the Federal Home Loan Bank by the 1932 Act is broad enough to bar state stamp taxes on this loan transaction. We decided a very similar question in *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21. There the State of Maryland imposed a stamp tax upon the recording of mortgages at the rate of 10 cents for each $100 of the principal amount of the mortgage indebtedness. The Home Owners' Loan Corporation sought to record a mortgage upon payment of the ordinary recording fee without payment of the additional state stamp tax. The mortgage had been issued to it as security for a loan which the Corporation had made under now defunct provisions of the Home Owners' Loan Act of 1933. Section 4 (c) of that Act provided that "[t]he Corporation, including . . . its loans" shall be exempt "from all taxation . . . now or hereafter imposed . . . by any State" except for real estate taxes. We unanimously affirmed the holding of the state court that this exemption provision, practically identical in language and substance to the exemption in 12 U. S. C. § 1433, precluded application of the recording tax to mortgages securing loans from the Corporation.

The state court in the present case, although drawing no distinction between the terms "loans" and "advances," nevertheless thought the *Pittman* decision inapplicable here because in that case the mortgage was presented for recording by the exempt lender itself (the Home Owners' Loan Corporation) while here the South Carolina tax was assessed against the borrowing petitioner association rather than against the exempt lender (the Home Loan

* 364 U. S. 812.

Bank). We distinctly said in *Pittman*, however, that the fact that the state taxing statute did not require payment of the tax by the lender has "no determining significance," our reason being that " 'whoever pays it it is a tax upon the mortgage and that is what is forbidden by the law of the United States.' " [7] We went on in *Pittman* to recognize that the real question was whether the "critical term . . . 'loans' . . . should be construed as covering the entire process of lending, the debts which result therefrom and the mortgage given . . . as security." [8] The question here is the same as to the synonymous term "advances" [9] and as to the promissory notes securing the advances, since the language of the exemption is equally broad. The factors given weight in the *Pittman* opinion in deciding that the exemption covered the entire loan transaction are also present here. The Act under consideration there required that the loans "be secured by a duly recorded home mortgage" just as here the Act requires the advances to be secured by the note or obligation of the borrower. Here, as we said in *Pittman*, therefore, the documents sought to be taxed "were indispensable elements in the lending operations authorized by Congress" [10] and were required for the protection of the lending institution. The tax in *Pittman* was

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[7] 308 U. S., at 31, citing *Federal Land Bank* v. *Crosland*, 261 U. S. 374, 378–379.

[8] 308 U. S., at 31.

[9] The fact that the term used throughout the 1932 Act with reference to these transactions is "advances" rather than "loans" is not a significant distinction from *Pittman* but merely represents a congressional choice between synonyms, as was indicated by Senator Reed in introducing on the Senate floor the amendment which added the word "advances" to the exemption provision:

"MR. REED. We should not, of course, put the *loans* of this new bank in the position of being taxable in the several States." 75 Cong. Rec. 14659. (Emphasis supplied.)

[10] 308 U. S., at 32.

"graded according to the amount of the loan" [11] and here too the face value of the notes is the measure of the tax.

While the question of the breadth of the exemption of "advances" in the 1932 Act thus is persuasively answered by our reasoning in *Pittman*, the same conclusion is called for by the language and legislative history of that Act as a whole. It set up a system of federally chartered Home Loan Banks for the purpose, as stated in the House and Senate Committee Reports, of placing "long-term funds in the hands of local institutions" in order to alleviate the pressing need of home owners for "low-cost long-term installment mortgage money" and to "decrease costs of mortgage money" with a "resulting benefit to home ownership in the form of lower costs and more liberal loans." [12] It is to this end that the Act authorizes the Federal Home Loan Banks to make "advances" of funds to eligible borrower institutions "upon the note or obligation" of the borrower secured primarily by mortgages on homes.[13] The exemption of these "advances" from taxation obviously is in keeping with the Act's overall policy of making these mortgage funds available at low cost to home owners. Regardless of who pays the documentary stamp taxes here at issue, the necessary effect of the taxes is to increase the cost of obtaining the advances of funds from the Home Loan Bank to be used in making loans to home owners. In its impact, therefore, this tax, whether nominally imposed on the Bank or on the petitioner, is bound to increase the cost of loans to home owners and thus contravene the basic purpose of Congress in insulating these advances from state taxation. We hold that it was error to construe the exemption provision of the 1932 Act as not broad enough to bar

[11] 308 U. S., at 31.

[12] H. R. Rep. No. 1418, 72d Cong., 1st Sess., pp. 8–10; S. Rep. No. 837, 72d Cong., 1st Sess., pp. 9–11.

[13] 12 U. S. C. §§ 1429–1430b.

imposition of the State's stamp taxes on the notes which were an integral part of these loan transactions.

This leaves for consideration the state court's holding that, in instances where the borrower is a Federal Savings and Loan Association such as petitioner, the exemption conferred upon the entire loan transaction by the 1932 Act was impliedly repealed by the taxation provision in the Home Owners' Loan Act of 1933. The court based this holding upon the following language of the 1933 Act:

> ". . . [N]o State . . . or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 12 U. S. C. § 1464 (h).

This provision unequivocally bars discriminatory state taxation of the Federal Savings and Loan Associations. The state court held that this prohibition of discriminatory taxes also impliedly authorizes all nondiscriminatory state taxes imposed on these Federal Associations, thereby to that extent repealing the 1932 exemption. We agree with petitioner, however, that in enacting § 1464 (h) in 1933 Congress did not, either expressly or impliedly, repeal the provision of the 1932 Act which had exempted these loan transactions from state taxation. Clearly there is no express language providing for such repeal, and it is signficant that when other provisions of the 1932 Act were to be superseded by the 1933 Act they were repealed expressly and not by implication.[14] It also would be difficult to think of less apt circumstances for the finding of an implied repeal. These two Acts, both designed to provide home owners with easy credit at low cost, were passed within a year of each other on the basis

[14] See 48 Stat. 129; H. R. Rep. No. 55, 73d Cong., 1st Sess., p. 1; S. Rep. No. 91, 73d Cong., 1st Sess., p. 1.

of the same hearings and when read together form a consistent scheme in which the 1932 exemption provision contributes to the major purpose of low-cost credit precisely as it did before passage of the 1933 Act. Nor is there even an intimation in the legislative history of the 1933 Act of any intention to reduce the scope of the exempt status of Home Loan Banks. Indeed, the only comment that would seem to have any bearing on the matter is the statement in the House and Senate Committee Reports that the 1933 Act was to provide new means of "direct relief to home owners" without "otherwise disturb[ing] the functioning of the Federal home-loan bank system." [15] Moreover, a construction of the 1933 Act to permit state taxation of these loan transactions when the borrower is a Federal Savings and Loan Association would bring about an incongruous result. The States would still be barred by the exemption provision of the 1932 Act from taxing these transactions when the borrower is a state-chartered association.[16] To contend that the 1933 Act allows the State to tax Federal Associations on the loan transactions when it is barred by the 1932 Act from similarly taxing state-chartered associations is to urge the very kind of discriminatory taxation which the 1933 Act itself emphatically prohibits. And surely it would be completely unwarranted to construe the 1933 Act, which concerns only Federal Savings and Loan Associations, as eliminating the exemption on Home Loan Bank "advances" when the borrower is a state-chartered institutiton.

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[15] H. R. Rep. No. 55, 73d Cong., 1st Sess., p. 1, see S. Rep. No. 91, 73d Cong., 1st Sess., p. 1.

[16] The 1932 exemption of Home Loan Bank "advances" obviously does not in any way depend upon the fact that the borrower is a Federal Savings and Loan Association, as is made all the more evident by the fact that such Federal Associations did not come into existence until passage of the 1933 Act.

For all these reasons, the more sensible as well as the more natural conclusion is that in the 1933 Act Congress left unimpaired the exemption of these loan transactions from state taxation conferred by the 1932 Act. The judgment of the state court therefore is reversed and the cause remanded for proceedings not inconsistent with this opinion.

Reversed and remanded.